Quality Engineered Products Co., Inc. *and* International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, Local Lodge No. 433 *and* M. C. Mitchell. Cases 12-CA-10167 and 12-CA-10268

26 August 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On 23 November 1982 Administrative Law Judge Walter H. Maloney, Jr., issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and counsel for the General Counsel filed a brief opposing Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs[1] and has decided to affirm the rulings, findings,[2] and conclusions[3] of the Administrative Law Judge and to adopt his recommended Order,[4] as modified.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Quality Engineered Products Co., Inc., Tampa, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 1(k) and reletter the subsequent paragraph according:

"(k) Insisting to impasase on nonmandatory subjects of bargaining."

2. Insert the following as paragraph 2(d) and reletter the subsequent paragraphs accordingly:

"(d) Restore the normally scheduled workweek."

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT tell employees that it would be futile for them to support the Union.

WE WILL NOT tell employees that they do not need an incumbent labor organization and can deal directly with management.

WE WILL NOT tell employees that their support for the Union wil make enemies for them within the Company.

WE WILL NOT interrogate our employees because they have filed an unfair labor practice charge or beacuse someone has filed such a charge on their behalf.

WE WILL NOT tell employees that they might be discharged for supporting a union.

WE WILL NOT unilaterally institute a sick pay plan or any other changes in wages, hours, and benefits without first notifying the

[1] The General Counsel moved in her answering brief to strike Respondent's exceptions for failure to comply with Sec. 102.46(b) of the Board's Rules and Regulations, Series 8, as amended. Although Respondent's exceptions and brief in support thereof do not conform in all particulars with the above-cited section of the Board's Rules and Regulations, they are not so deficient as to warrant striking. Accordingly, the General Counsel's motion to strike is denied.

[2] We do not rely on the Administrative Law Judge's statement, in part I of his Decision, that Respondent admitted the surface bargaining charge. We find that Respondent engaged in surface bargaining in violation of Sec. 8(a)(5) of the Act based on the credited evidence in the record.

However, in finding that Respondent violated Sec. 8(a)(5) of the Act by engaging in bad-faith surface bargaining, Member Hunter does not rely on Respondent's initial proposals of, *inter alia*, no dues checkoff, a broad management-rights clause, and a broad no-strike clause as evidence in themselves of Respondent's bad faith in bargaining.

Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[3] We agree with the Administrative Law Judge that Respondent violated Sec. 8(a)(1) by interrogating employees because they have filed an unfair labor practice charge or because someone has filed such a charge on their behalf. We find it unnecessary, however, to adopt his further conclusion that Respondent by this conduct violated Sec. 8(a)(4).

[4] We will modify the Administrative Law Judge's recommended Order and notice to conform with his findings and conclusions.

Union and offering to bargain with it concerning such changes. WE WILL NOT unilaterally reduce the working hours of employees or shorten the workweek and WE WILL NOT do so in reprisal for their rejection of company proposals or because they engage in any union or protected activity.

WE WILL NOT refuse to grant pay increases to employees because they have participated in the union bargaining committee or because they have engaged in other union activities or protected concerted activities.

WE WILL NOT engage in surface bargaining. WE WILL NOT insist to impasase on nonmandatory subjects of bargaining.

WE WILL NOT by any means or in any manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed to them by Section 7 of the National Labor Relations Act.

WE WILL bargain collectively in good faith with the Union as the collective-bargaining representative of all of our full-time and regular part-time production and maintenance employees, including truckdrivers, but excluding office clerical employees, guards, and supervisors as defined in the Act, and, if agreement is reached, embody that agreement in a written signed document.

WE WILL furnish to the Union in a timely fashion requested data which is relevant to the performance by the Union of its function as collective-bargaining representative.

WE WILL make whole M.C. Mitchell and any other employees for any loss of pay which they have suffered by reason of the discriminations practice against them, with interest.

WE WILL restore the normally scheduled workweek and restore the starting time of each workday to 8 a.m.

QUALITY ENGINEERED PRODUCTS CO., INC.

DECISION

STATEMENT OF THE CASE

FINDINGS OF FACT

WALTER H. MALONEY, JR., Administrative Law Judge: This case came on for hearing before me in Tampa, Florida, upon a consolidated unfair labor practice complaint[1] issued by the Regional Director of Region 12 and amended at the hearing, which alleges that Quality Engineered Products Co., Inc. (herein the Respondent),[2] violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended (herein the Act). More particularly, the amended complaint alleges that the Respondent threatened to close the plant in preference to bargaining with the Union, told employees they could negotitate directly with the Respondent, interrogated employees concerning the filing of a charge, informed employees that supporting the Union would result in making enemies with the Respondent's management, and told employees they could form their labor organization without the need for representation by an outside union. The amended consolidated complaint goes on to allege that the Respondent denied employee M. C. Mitchell, a member of the Union's negotiating committee, a wage increase because of his activities in support of the Union. It further alleges that the Respondent engaged in surface bargaining with the Union, pointing to such acts as: (1) insistence upon extremely broad management rights-clause; (2) insistence on a no-strike clause which included a provision for financial liability of the Union for unauthorized strikes, (3) insistence that the Union bear the entire cost of any arbitration; (4) insistence to impasse on a management-rights clause permitting the Respondent to make stenographic transactions of bargaining sessions; (5) abrupt cancellation of scheduled bargainig sessions and failure to appear for them; (6) failure to provide the Union a promised set of final proposals; (7) delay for an extended period of time in responding to repeated union requests for a copy of the existing employee health insurance policy and other data relating to the composition of the bargaining unit; (8) unilateral change in the starting and quitting times for work; and (9) a unilateral change in the regular workweek from a 5-day to a 4-day week and a unilateral change in working hours. The Respondent admits the surface bargaining charge, denies that it withheld any pay increases from Mitchell for union reasons or any other reasons, and denies the allegations of independent violations of Section 8(a)(1) of the Act. Upon these contentions the issues herein were joined.[3]

[1] The principal docket entries in this case are as follows:

A charge filed in Case 12-CA-10167 by International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, Local Lodge No. 433 (herein the Union), against the Respondent on May 7, 1982; an amended charge filed by the Union against the Respondent on June 9, 1982; a complaint issued by the Regional Director for Region 12 against the Respondent in Case 12-CA-10167 on June 18, 1982; the Respondent's answer filed on June 23, 1982; an amendment to complaint in Case 12-CA-10167 issued on August 10, 1982; a charge filed in Case 12-CA-10268 against the Respondent by M. C. Mitchell, an individual, on July 12, 1982; an order consolidating cases and an amendment to the complaint issued against the Respondent by the Regional Director on August 13, 1982; the Respondent's answers to the amendment to the complaint filed on August 13 and 17, 1982. A hearing was held in Tampa, Florida, on August 23 and 24, 1982 and briefs filed with me by the General Counsel and the Respondent on or before October 27, 1982.

[2] Respondent admits, and I find, that it is a Florida corporation which maintains its principal place of business in Tampa, Florida, where it is engaged in the manufacture and sale of steel doors and door frames. During the 12 months preceding the issuance of the complaint herein, the Respondent, in the course and conduct of its business, purchased and received at its Tampa, Florida, plant directly from points and places located outside the State of Florida goods and materials valued in excess of $50,000. Accordingly, the Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. The Union is a labor organization within the meaning of Sec. 2(5) of the Act.

[3] Certain errors in the transcript are hereby noted and corrected.

I. THE UNFAIR LABOR PRACTICES ALLEGED

The Respondent operates a small, closely held, steel fabricating plant in Tampa, Florida, where it manufactures steel doors and door frames. Its principal owner, president, and chief operating officer is Burton Bernstein. At the time of the events here in question, the Respondent employed about 20 production and maintenance employees who worked under the direct supervision of General Manager Norris Gordon. The Charging Party won a representation election conducted among these employees on April 12, 1981, and was certified by the Regional Director on April 30 (Case 12-RC-6054). Between November 11, 1981, and July 16, 1982, nine collective-bargaining sessions were held, or were scheduled to be held, between these parties[4] and other less formal meetings also occurred. They failed to produce a contract.

While negotiations were in progress, both Bernstein and Gordon had repeated occasions to discuss the unionization of the plant, the prospects for a contract, and the desirability of union representation with various employees. By admitting the allegations in subparagraphs 8 and 9 of the amended consolidated complaint, except for paragraphs 8(e) and 9(c), the Respondent admitted, and I find, the facts hereinafter set forth.

In late December 1981, Bernstein told employees that it would be futile to support the Union and threatened them that the shop would be closed before the Union would be allowed to represent them. Sometime early in 1982, he repeated this statement to employees. In March 1982, he told employees that they did not need to be represented by the Union, that they could talk directly to him, and that he did not want anyone to tell him what to do and how to run his shop. In May 1982, shortly after the filing of the unfair labor practice charge in this case, Bernstein interrogated employees concerning the filing of the charge. During this same period of time, Norris told employees that they should forget about the Union because, by supporting the Union, they were making enemies within the Company. He also told them on another occasion that they did not need an outside labor organization and could form their own union in the shop.

In June 1981, when he transferred from the position of expediting supervisor to the job of punch press operator, Mitchell was making $6.37 per hour. In June 1982, he was being paid the identical rate. The failure of the Respondent to give Mitchell any kind of a wage increase during this period of time was a source of constant dissatisfaction. Sometime in March 1982, Mitchell approached Gordon for a raise. He told Gordon that he was angry because another employee, Larry Ramirez, had received a 75-cent-per-hour raise simply by walking off the job. Gordon objected, saying that Ramirez had not received such an amount. Mitchell insisted that he had. Gordon's further reply was simply that, if Ramirez had gotten such an increase, it was not his doing and that Bernstein must have given it to him. I credit Mitchell's testimony that Gordon then asked him whether, if Mitchell were Bernstein, would he give a raise to a man who was trying to bring a union into the shop. They argued further and Gordon finally said, "Well, maybe when this is over, Burt will give you a raise." Mitchell asked, "How much?" and Gordon replied, "Probably a quarter." Mitchell then told Gordon that if all Bernstein could give was a quarter, he did not want it. Later, Gordon told Mitchell that he would recommend Mitchell for a 50-cent raise.

By admitting the allegations in paragraph 12 of the amended consolidated complaint, the Respondent admits that in the course of time during which it was negotiating with the Union it engaged in the following acts and conduct. The Respondent insisted on an extremely broad management-rights clause. It insisted on a broad no-strike clause, which, among other things, imposed financial liability for strikes not authorized by the Union.[5] It also insisted on including in a contract the following provisions:

a. No arbitration unless the Union assumed the entire cost of the arbitration.

b. No dues checkoff.

c. Inclusion in the management-rights clause of a provision allowing management to make a stenographic transcription of the bargaining sessions. (This demand was insisted to impass.)

d. A no-strike clause prohibiting sympathy strikes by employees.

In addition, the Respondent canceled a bargaining session on March 26 because Bernstein failed to appear and failed to provide the union negotiators at that time with a copy of a final company proposal which had been promised. It delayed for several months providing the Union both a copy of a group insurance policy covering unit employees and a requested list of employees, including their job classifications and wage rates.[6] The General Counsel pointed out in her brief that the proposal, which was finally made and is in evidence, contained 18 job classifications for a unit of about 20 people.

In addition to the proposals, which were advanced and in some instances were insisted upon to impasse, the complaint, as amended, charged that the Respondent unilaterally changed the starting time of employees from 8 to 7:30 a.m. and unilaterally instituted a sick pay plan for employees while negotiations were in progress without either notifying the Union of its intended action or bargaining about these actions. The former action was admitted by counsel and the latter action was evidenced by the uncontradicted and unexplained testimony of Bernstein. I find that both changes in benefits and working

[4] On other occasions these meetings were held or were scheduled to be held, on November 11 and December 2 and 14, 1981 and January 6 and 29, February 12, March 9, and July 9 and 16, 1982.

[5] The evidence in this case showed that the no-strike proposal sought to impose financial liability not only on the collective-bargaining representative, Local Lodge No. 433, but also on the Boilermakers International as well.

[6] Mills, the Union's lead negotiator, repeatedly complained to management representatives that the refusal of Respondent to supply him with requested information concerning the composition of the bargaining unit made it impossible for him to formulate an intelligent wage demand, because he did not know current employee job classifications or what the wage was in each classification. He ended up by making a demand for a $1-an-hour across-the-board increase for every employee, which the employer promptly rejected.

conditions in fact took place in the late winter or early spring of 1982.

On July 9, 1982, the Respondent presented union negotiators with what it termed its final proposal. The proposal was submitted to the union membership and was rejected. The Union informed the Respondent of this rejection on July 16, the last bargaining session which took place before the hearing in this case.

In August 1982, about 3 weeks before the hearing in this case and a few days after bargaining unit employees voted to reject the Company's final proposal, the Respondent posted a weekly work scheduled for all employees which indicated that, with one exception, they would each be working a 32-hour week. Previously, employees had regularly worked a scheduled 40-hour week. While the plant remained open and functioning on a 40-hour basis, each employee was given a different day off so that a crew would be available throughout a regular week but in diminished numbers. Gordon brought this notice to the attention of employees when it was posted, and it remained posted up to the time of the hearing in this case. There is no suggestion that the curtailment of the workweek or the posting of the notice assigning particular days off to particular persons was negotiated with the Union or that it was notified in advance of this action.

C. *Analysis and Conclusions*

1. The independent violations of Section 8(a)(1) of the Act

Because the Respondent formally admitted many of the allegations in the amended consolidated complaint but then went on to litigate related matters, it is somewhat difficult to determine in this closely intertwined set of facts which violations the Respondent acknowledged and which violations it contested. However, whether admitted or contested, any violation must be incorporated into findings and conclusions in order to be established.

I conclude that the Respondent violated Section 8(a)(1) of the Act in the following ways:

a. In December 1981, by telling employees that it would be futile for them to support the Union.

b. In December 1981, by telling employees that the shop would be closed before the Union would be allowed to represent unit employees.

c. By again telling employees a few weeks later that it would be futile to support the Union and by again telling them that the shop would be closed if the Union was allowed to represent them.

d. By interrogating employees concerning the filing of an unfair labor practice charge, the Respondent engaged in coercive activity in violation of Section 8(a)(1) of the Act and also violated Setion 8(a)(4) of the Act. The latter aspect of its conduct was not formally alleged by the General Counsel but was fully litigated and established by record evidence and admissions.

e. By telling employees that they did not need to be represented by the Union and that they could approach the Respondent directly.

f. By telling employees that they should forget about the Union because, by supporting the Union, they were making enemies within the Company.

g. By telling employees to be careful when the Union "hit the road" or he would be right behind it.

2. The withholding of a wage increase from M. C. Mitchell

All parties agree that punch press operator M. C. Mitchell was earning the identical wage in June 1982 that he received in June 1981. The General Counsel claims that during this period of time he was discriminatorily denied periodic wage increases while the Respondent contends that he was overpaid from the start and that no increases were given to him during this period of time so that his rate could be brought more closely into line with what other employees were earning.

Mitchell was far and away the most active union supporter among the Respondent's employees. Before the representation campaign, he passed out authorization cards, held union meetings, and supported the organizing campaign in talks with individual employees. He was the plant representative on the union negotiating team and attended most of the bargaining sessions.

Mitchell had worked for the Respondent for over 3 years at the time of the hearing in this case. He was originally employed in the painting department, and, in the spring of 1981, was promoted to a salaried position called expediting supervisor.[7] In this position he was responsible for shipping completed orders to customers and was required to deal extensively with the public. He was paid $255 a week, or the equivalent of $6.37 an hour for a 40-hour week. Mitchell did not work out well in this position because he did not get along with some of the customers, so the Respondent transferred him to his present job as punch press operator with no loss of income. Mitchell did not object to being relieved of his position as expediting supervisor but he would have preferred to return to the painting department. The Respondent needed him more in the job of punch press operator so it assigned him to that job. It should be noted that Mitchell had been a punch press operator for about 5 years before he came to work for the Respondent.

Respondent's wage review practice was that new employess were reviewed after their first 30 days of employment. If they were deemed satisfactory, they were then regarded as permanent employees and given 25 cent per hour more than their hiring rate. Thereafter, they were normally subject to a salary review each 6 months. During the period here in question, this policy was not applied in Mitchell's case, although at least eight other employes were given raises ranging from 50 cents to $2 an hour. The Respondent points out that Mitchell's predecessor as punch press operator earned significantly less than Mitchell did and that others in the plant with greater seniority than Mitchell are still earning less. Using

[7] There is no evidence that Mitchell actually supervised anyone in this position. The title "Supervisor" signified his responsibility for certain job activities not for the performance of the subordinate employees. The job itself involved making deliveries to customers and getting materials ready for shipment.

these factors as the basis for its argument, the Respondent contends that they established that Mitchell was overpaid. This argument fails to explain why punch press operator Norman Grout was hired off the street on May 1, 1982, at a rate which is 37 cents higher than what Mitchell was then receiving to perform the same function. It also fails to explain why the Respondent "significantly overpaid" Mitchell for a period of a year or more. We are left with no reason for this unaccountable generosity unless we are to infer that the Respondent was an unusually liberal and bountiful employer, an inference not supported by any other evidence in the record.

What is dispositive of the conflicting arguments are the remarks attributed Gordon, the Respondent's general manager, who responded to Mitchell's request for a raise by asking him rhetorically whether he (Mitchell) would give an employee a raise who was trying to bring a union into the plant. Gordon supplemented this remark by saying that he thought Bernstein might give Mitchell another 25 cents per hour "when this is over," referring to his difficulties in dealing with the Union. In light of collateral violations of the Act evidencing animus, which the Respondent admits, Mitchell's leadership role in the union effort, the flimsiness of the Respondent's proferred explanation, and Gordon's admission against interest, I conclude that the Respondent withheld pay increases from Mitchell in reprisal for Mitchell's union activities and, in doing so, violated Section 8(a)(1) and (3) of the Act.

3. Violations of Section 8(a)(5) of the Act

In January 1982, while negotiations were in progress the Respondent unilaterally established a sick pay plan. According to this plan, all employees with service of 1 year or more are entitled to 3 days of sick leave each year "if they are actually sick." This benefit was instituted by Bernstein without notice to or consultation with the Union. Interestingly enough, a similar provision is not to be found in any of the contract proposals the Respondent made to the Union. By unilaterally instituting a sick pay plan without notifying or bargaining with the Union, the Respondent violated Section 8(a)(1) and (5) of the Act. In the spring of 1982, the Respondent abruptly moved the starting time back from 8 to 7:30 a.m. without notifying or bargaining with the Union. By taking this unilateral act, the Respondent violated Section 8(a)(1) and (5) of the Act.

In August 1982, shortly after the employees voted to reject Respondent's final offer, Respondent posted a work schedule on the bulletin board and informed employees that from that point forward they would be working a 32-hour week. The schedule indicated a day off each week which regular employees would be required to take but indicated that the plant would continue to operate on its usual 40-hour basis with a reduced complement each day. No advance notification of this action was given to the Union, and no effort was made to meet and discuss this matter with union representatives.

The Respondent defends this unilateral action on the basis that it had agreed with the union representatives during negotiations that the normal workweek would be 40 hours but that nothing in the agreement should be construed as a guarantee of hours or days of work. Moreover, it seeks to justify its action on the basis of economic necessity, stating that business was slow and that it had no need for a full complement of employees each day of the workweek. It further defends by saying that, by the time the hearing took place, it had rescinded the short workweek so all employees were back to a 40-hour schedule.

The Respondent's tentative agreement with union representatives on this clause during negotiations can afford it no solace in this case. It was understood from the outset of bargaining that any agreements on any contract item was a tentative agreement and was subject to final agreement on all items. Any "sign-off" on individual items by union representatives was subject to final agreement and ratification by the members of the bargaining unit. There was no agreement by unionr epresentative on all contract proposals and whatever proposals were submitted to the membership were rejected shortly before the imposition of the 32-hour week.

Secondly, the action of the Respondent in early August was a violation of the terms of the tentative agreement that it asserts in defense of its actions. The clause in question stated the normal workweek to be 40 hours. The net effect of the work schedule posted at the Respondent's plant was that the normal workweek would thereafter be 32 hours a week and nothing that the Respondent's supervisors told employees in anyway modified the clear indication on the schedule. Moreover, I discredit the contradicted testimony of the Respondent's supervisors that the schedule was rescinded. No employee who testified at the hearing was aware of any such rescission and, as of the date of the hearing, the 32-hour schedule remained posted at the plant. Accordingly, since this abrupt change in the Respondent's normal hours of work was not the subject of advance notice and bargaining with the Union, it was unilateral action taken in violation of Section 8(a)(1) and (5) of the Act.

There is no basis in the record, other than the naked assertion of management witnesses, that the Respondent suffered any economic difficulties in early August which necessitated this reduction in the workweek of the employees. When company witnesses testified at the hearing that the problem had gone away and employees were back on a full 40-hour schedule without so notifying the employees, this testimony raised more than a small suspicion that the proffered excuse was not genuine. Since it was proffered within a few days following the rejection by bargaining unit employees of the Respondent's final offer, and since it was proffered by a respondent that had demonstrated its abiding animus by committing numerous other violations of Section 8(a)(1) and (3) of the Act, I conclude that by reducing the hours of its employees in August 1982 the Respondent also violated Section 8(a)(3) of the Act.

On May 15, 1981, Carl M. Aldridge, Jr., the Union's assistant business manager, wrote Bernstein and requested copies of the Company's group insurance plan, pension plan, work rules, and a statement of the Company's current overtime policy. He asked for the name and date

of hire of each employee, his job classification, and his present wage rate, as well as other information on current company practice and benefits. In his letter, Aldridge explained to Bernstein that he needed the information in order to bargain intelligently with Respondent and said that he would like to have the data soon so that negotiations could begin early in June.

Bernstein replied by letter dated June 1. The letter supplied certain information but did not forward a copy of any group insurance or pension plan, and contained numerous errors and omissions in reciting individual employee data which had been requested. At a meeting later in the summer with company attorney, James J. Cusack, Union Representative Mills told Cusack that some of the employee data was incomplete or inaccurate. He asked Cusack for an updated list of employee data and again asked for a copy of an insurance policy which had been promised. Similar requests were voiced at later negotiating meetings. It was not until July 16 that the Union received a complete and updated list of employees and related personal data. Respondent was under a duty to supply information in a timely fashion in order to permit the Union to perform its function as bargaining agent in an intelligent fashion. Respondent gave no explanation for its foot dragging on this request. Accordingly, I conclude that by its failure to provide the Union, in a timely manner, with data which was relevant to the Union's function as bargaining representative, Respondent violated Section 8(a)(1) and (5) of the Act.

The General Counsel alleges that, in the course of dealing with the Union as the collective-bargaining agent of the Respondent's production and maintenance employees, Respondent not only violated Section 8(a)(5) of the Act by making unilateral changes and wages and working conditions but also engaged in surface bargaining; i.e., it pretended to be negotiating a contract with the Union when in fact it was acting so as to avoid entering into a contract. Most of the facts relied on by the General Counsel in support of this contention are admitted in the record by the Respondent. While the Respondent did not formally admit the legal conclusion set forth in paragraph 13 of the amended consolidated complaint, namely, that these facts add up to a refusal on its part to bargain in good faith, it did concede on the record that I, or the Board, would be warranted in concluding from such facts that it had in fact engaged in unlawful surface bargaining. I draw just such a conclusion.

The Respondent's pattern of behavior from the outset of its relationship with the Union was one of intense hostility. It committed various unfair labor practices evidencing its animus, including repeated statements to Mitchell and presumably others aimed at driving a wedge between the Union and the members of the bargaining unit. Bernstein flatly told employees that he would close the shop before allowing a union to represent the employees and asserted without hesitation that he was never going to negotiate a contract. The Respondent's foot dragging, its refusal to supply information, its abrupt unilateral actions in granting sick pay benefits and in reducing the employees workweek in reprisal for employee action in rejecting an extreme "last offer" made up of harsh and vindictive proposals all evidence Respondent's unwillingness to negotiate in a meaningful way and illustrate in bold relief its underlying desire to rid the Company of the Union as a bargaining representative rather than come to terms with it. In light of these factors, and admissions, I conclude that Respondent was guilty of overall subjective bad faith in its dealings with the Union and thereby committed a violation of Section 8(a)(1) and (5) of the Act.

Upon the foregoing findings of fact, and upon the entire record herein considered as a whole, I make the following:

CONCLUSIONS OF LAW

1. Quality Engineered Products Co., Inc., is now and at all times material herein has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL–CIO, Local Lodge No. 433, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time production and maintenance employees, including truckdrivers, employed by the Respondent at its Tampa, Florida, plant but excluding officer clerical employees, guards, and supervisors as defined in the Act constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. Since April 30, 1981, the Union herein has been the exclusive bargaining representative of all the employees in the unit found appropriate in Conclusion of Law 3 for the purpose of collective bargaining, within the meaning of Section 9(a) of the Act.

5. By unilaterally instituting a sick plan, reducing the regularly scheduled workweek of its employees, refusing to provide the Union in a timely manner with data concerning the composition of the bargaining unit which was relevant to the performance by the Union of its function as bargaining agent, by insisting to impasse on the nonmandatory subject of preparing a stenographic transcript of negotiating sessions, and by engaging in surface bargaining, Respondent herein violated Section 8(a)(5) of the Act.

6. By coercively interrogating employees because they have filed unfair labor practice charges or because someone has filed charges on their behalf, Respondent herein has violated Section 8(a)(4) of the Act.

7. By refusing to grant a pay increase or increases to M. C. Mitchell because of his activities on behalf of the Union, and by unilaterally reducing the scheduled workweek of employees because they rejected a contract proposal which was offered by the Respondent violated Section 8(a)(3) of the Act.

8. By the acts and conduct set forth in Conclusions of Law 5, 6, and 7; by informing employees that it would be futile to support the Union and by threatening to close the shop if the Union were allowed to represent employees; by telling employees that they did not need to be represented by a labor organization but they could talk directly with management, and the Respondent did not want anyone telling it what to do and how to do it;

by telling employees that their support of the Union would make enemies within the Company; and by telling employees that they did not need an outside labor organization and that they could form their own labor organization, the Respondent violated Section 8(a)(1) of the Act.

9. The aforesaid unfair labor practices have a close, intimate, and adverse effect on the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has committed various unfair labor practices, I will recommend that it be required to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes and policies of the Act. Since the violations of the Act found herein are repeated, pervasive, and disclose an attitude on the part of this the Respondent to behave in total disregard of the rights of its employees, I will recommend to the Board a so-called broad 8(a)(1) remedy designed to suppress any and all violations of that section of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979). My recommended Order will provide that the Respondent be required to make whole M. C. Mitchell and other employees for any loss of earnings which they may have sustained by reasons of the discriminations practiced against them in accordance with the *Woolworth* formula[8] with interested thereon at the adjusted prime rate used by the Internal Revenue Service for the computation of tax payments. *Olympic Medical Corp.*, 250 NLRB 146 (1980); *Isis Plumbing Co.*, 138 NLRB 716 (1962). It will also require the Respondent to bargain collectively in good faith with the Union and, if agreement is reached, to embody that agreement in a written, signed contract. I will also recommend that the Respondent be required to post the usual notice advising its employees of their rights and of the results of this case.[9]

In order to ensure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, the initial period of certification shall be construed as beginning on the date the Respondent commences to bargain in good faith with the Union. See *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421, enfd. 350 F.2d 57 (10th Cir. 1965).

Upon the basis of the foregoing findings of fact conclusions of law, and upon the entire record and pursuant to Section 10(c) of the Act, I make the following recommended:

ORDER[10]

The Respondent, Quality Engineered Products Co., Inc., Tampa, Florida, and its officers, supervisors, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Informing employees that it would be futile to support the Union.

(b) Threatening to close the shop if employees allowed the Union to represent them.

(c) Telling employees that they did not need to be represented by a labor organization, that they could talk directly with management, and that the Respondent did not want anyone telling it what to do.

(d) Interrogating employees because they have filed an unfair labor practice charge or because someone has filed such a charge on their behalf.

(e) Informing employees that they were making enemies in the Company by supporting the Union.

(f) Informing employees that they did not need a labor organization to represent them and that they could form their own labor organization.

(g) Telling employees that they might be discharged for supporting a union.

(h) Discouraging membership in or activities on behalf of International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, Local Lodge No. 433, or any other labor organization, by refusing to grant pay increases, shortening the workweek, or otherwise discriminating against employees in their hire or tenure.

(i) Unilaterally instituting a sick pay plan or other benefits, unilaterally reducing the regularly scheduled workweek, or otherwise changing wages, hours, and terms, and conditions of bargaining unit employees without first notifying the Union and offering to bargain collectively with it concerning such changes; provided that nothing contained in this Order shall be construed to require Respondent to discontinue any benefit or reduce any wages which have heretofore been granted.

(j) Refusing to produce in a timely fashion data relevant to the Union's responsibility as bargaining agent, which has been requested by the Union.

(k) Refusing to bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of all of the full-time and regular part-time production and maintenance employees, including truck drivers, employed by Respondent at its Tampa, Florida,

[8] *F. W. Woolworth Co.*, 90 NLRB 289 (1950).

[9] The Respondent claims that its proposal to the General Counsel to post a notice shoul absolve it from any further liability for the unfair labor practices it committed, citing *Broyhill Co.*, 260 NLRB 1366 (1982). The notice proffered by Respondent falls far short of what the Board required in *Broyhill* and does not even address many of the serious unfair labor practices found in this case. Cases such as *Broyhill, supra*, and *Kawasaki Motors Corp.*, 231 NLRB 1151 (1977), involve instances where the Board found that promptly posted, specifically worded notices where, in effect, a sufficient remedy for coercive statements made to employees by minor supervisors The Board has yet to let a respondent off the hook by disavowing the remark of a company president or chief operating officer, and there is a certain anomaly in permitting it to do so. Dispositive of the Respondent's contention in this case is that it never actually posted the notice it seeks to use as a defense to a Board remedy. Hence, the notice in question does not even fall under the *Broyhill* line of cases and is nothing more than an offer to enter into a informal settlement agreement with the General Counsel which offer the General Counsel rejected.

[10] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

plant, exclusive of office clerical employees, guards, and supervisors as defined in the Act.

(l) By any other means or in any other manner interefering with, restraining, or coercing employees in the exercise of rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action which is designed to effectuate the purposes and policies of the Act:

(a) Make whole M. C. Mitchell and any other employees for any loss of pay or benefits which they may have suffered by reason of the discrimiantions found herein in the Section of this Decision entitled "Remedy."

(b) Recognize and, upon request, bargain collectively with International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, Local Lodge No. 433, as the exclusive collective bargaining representative of all of Respondent's full-time and regular part-time employees, including truckdrivers, and excluding office clerical employees, guards, and supervisors as defined in the Act, and if agreement is reached, embody that agreement in a written, signed instrument.

(c) Restore the normal starting time of each workday to 8 a.m.

(d) Preserve and, upon request, make available to the Board or its agent, for examination and copying, all payroll and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its Tampa, Florida, plant copies of the attached notice marked "Appendix."[11] Copies of said notice, on forms provided by the Regional Director for Region 12, after being duly signed by a representative, of the Respondent shall be posted by immediately upon receipt thereof, and be maintained by the Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 12, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

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[11] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."